IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 12 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME TAX

Versus

AMRAS TRADERS

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Appearance:

1. INCOME TAX REFERENCE No. 12 of 1992
MR MIHIR H JOSHI with MR MANISH R BHATT for Petitioner
MR RK PATEL for Respondent

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CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 16/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question has been referred for our opinion in respect of assessment year 1983-84 :-

"Whether, the Appellate Tribunal is right in law and on facts in directing the Income-tax Officer to adopt the status of the assessee as registered firm instead of AOP ?"

2. We have heard Mr Mihir H Joshi, learned counsel for the revenue and Mr RK Patel, learned counsel for the respondent-assessee.

3. Our attention has been invited to the decision of the Apex Court in CIT vs. Kandath Motors vs. (1997) 224 ITR 663 wherein the Apex Court has held that there is nothing in the Indian Partnership Act, 1932 or the Indian Contract Act, 1872 which prevent a partnership agreement whereunder the same person is a partner in two different capacities, one in his individual capacity and the other in his representative capacity on behalf of the heirs of the deceased partner.

In the facts of the instant case, the Income-tax Officer refused to grant registration under Section 184(7) of the Act to the assessee firm on the ground that the same individual was a partner in the firm in two capacities - one in his individual capacity and the other in his capacity as Karta of the HUF. The Tribunal followed the decision of this Court in Buddhalal Amulakhdas, 129 ITR 97 and directed the Income-tax Officer to grant registration to the assessee firm. The principle laid down by this Court in the aforesaid decision has been impliedly approved by the Apex Court in Kandath Motors' case (Supra). Hence, following the aforesaid decisions, we are of the view that the Tribunal was right in directing the Income-tax Officer to grant the assessee status of a registered firm instead of AOP.

4. Accordingly, our answer to the question is in the affirmative i.e. in favour of the assessee and against the revenue.

5. The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-